IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.Rev.Pet.No. 2406 of 2007()

AGAINST THE JUDGMENT IN CRL.R.P. 20/06 OF THE IV ADDL.SESSIONS JUDGE, ERNAKULAM AND IN C.C.NO. 573 OF 2003 OF THE J.F.C.M. I, KOCHI

REVN. PETITIONER: RESPONDENTS/ACCUSED 1 & 2

1. THE MUTUAL AID BANKERS,
   CHITTOOR ROAD, ERNAKULAM AREA
   LULU THEATRE, KOCHI-35 REPRESENTED BY IT'S
   FOREMAN P.L.NAVIS.

2. MR.P.L.NAVIS, S/O LATE SRI.LEONS,
   AGED 67, RESIDING AT PEYOLI HOUSE,
   PADAMUGAL P.O., KAKKANAD, KOCHI.

BY ADV. SRI.BABU CHERUKARA

RESPONDENTS: REVISION PETITIONER/COMPLAINANT

1. MR. JOSEPH GOMES, S/O KARMAL GOMES,
   AGED 64 YEARS, SEA VIEW COTTAGE,
   VALLARPADAM, ERNAKULAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 2406 of 2007

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Dated: 22-06-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.573 of 2003 on the file of the J.F.C.M.-I, Kochi, challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have

considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. Having regard to the facts and circumstances of the case, I am of the view that the sentence imposed on the revision petitioner pays to the complainant within four months from today a sum of Rs. 1.5 lakhs (Rupees one lakh fifty thousand only) by way of compensation under Sec. 357 (3) Cr.P. C. instead of the sentence imposed on him by the courts below, he need only undergo imprisonment till the raising of the Court. If, however, the revision petitioner commits default in making the payment as above, the sentence imposed on him by the courts below will revive.

This Revision is disposed of as above.

V. RAMKUMAR, JUDGE.

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